IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

Bail Appl..No. 4722 of 2007

(CRIME NO. 254/2007 OF OACHIRA POLICE STATION)

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PETITIONER/1ST ACCUSED:

SONI, AGED 23, S/O. SOMADAS,
SANADALAYAM, CLAPPANA NORTH, CLAPPANA,
KARUNAGAPPALLY, KOLLAM.

BY ADV. SRI.K.R.SUNIL

RESPONDENT:

SUB INSPECTOR OF POLICE,
OCHIRA POLICE STATION, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. S.U. NAZER.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/08/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No.4722 OF 2007

Dated this the 7th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused. Altogether, there are two accused persons. The crux of the allegations is that the de facto complainant – a friend of the petitioner, who was proceeding on his motor-cycle, was stopped by the accused persons and was attacked with dangerous weapons – an "Idivala" and a wooden stick. The alleged incident took place on 25/6/07. Nasal bone of the de facto complainant was fractured. The injured was immediately removed to the hospital. To the Doctor, it was alleged that it was a case of assault by two identifiable persons. First Information Statement was recorded only on 27/6/07. Names of both the accused persons are mentioned clearly in the First Information Statement. In the First Information Statement, the de facto complainant alleges that there is no

motive which could have prompted the accused – friends of his, to indulge in such conduct. The investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The learned counsel points out that there has been two days delay in lodging of the First Information Statement. The learned counsel further submits that the theory is artificial in that the de facto complainant asserts that there was no motive at all. The learned counsel for the petitioner submits that the petitioner is absolutely innocent and has no nexus whatsoever with the incident in which the de facto complainant suffered the grievous injury. In some other manner the injury must have been suffered. There is strain in the relationship between the parties. False allegations are hence raised belatedly, it is contended. It is, in these circumstances, prayed that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. There are absolutely no circumstances, at the moment, to discard the version of the de facto complainant. He is not responsible for the delay in the police recording the First

Information Statement. There is nothing inherently to doubt or suspect the version of the victim/injured. It is reasonable to assume that a person, who has suffered such injury, is unlikely to point the accusing finger at some other innocent friend of his. In any view of the matter, there are no circumstances justifying the invocation of the discretion under Sec.438 of the Cr.P.C. The weapon of offence has not been recovered. The accused/the petitioner may be directed to resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I find no features in this case which can prompt and persuade this Court to invoke the extraordinary equitable discretion under Sec.438 of the Cr.P.C. As contended by the learned Public Prosecutor, I agree that this is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the

Investigating Officer or the the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge